IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.594 OF 2007
WITH
CIVIL APPLICATION NO.1087 OF 2007

Shivaji Alias Pandurang
Krishna Patil .. Appellant.
Vs.
Rakmabai Jaysing Dafale .. Respondent.

Mr.Shailendra S.Kanetkar i/b Mr.P.M.Arjunwadkar for the appellant.
Mr.V.S.Kapse for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 3RD OCTOBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. This appeal is directed against concurrent judgments of the courts below by which a suit filed by the respondent-plaintiff for eviction and mesne profits has been decreed. Mr.Kanetkar, learned counsel for the appellant-defendant vehemently submitted that the case set up by the defenant that he was a tenant and not licencee in the suit property has not been considered by the courts below. The document dated 2nd February, 1990 clearly demonstrates that it was tenancy agreement and not lease agreement as held by the courts below. He then submitted that the document has also been proved by

the defendant by examining Isabai, an attesting witness to the document and, therefore, the findings recorded by the courts below that the document has not been proved is also incorrect. The provisions of section 68 of the Evidence Act have completely been overlooked by the courts below. I perused the judgments of the courts below. Even if it is accepted that the document in question was tenancy agreement and not lease deed and, therefore, its registration as contemplated under section 107 of the Transfer of Property Act was not necessary that would not help the defendants. The courts below have concurrently held that the document itself has not been proved. Although one of the attesting witness i.e. Isabai, was examined, her evidence is of no avail to the appellants. Isabai has stated that she had gone to the office of Sub-Registrar for registration of the lease deed, when admittedly, the lease deed is not a registered document and that appears to be the reason, as recorded by the appellate court in paragraph 15 of the judgment, as to why her evidence has been discarded. The trial Court has not even exhibited the said document since it had not been proved. Moreover, I find no reason to disturb the finding of the fact holding that the document was in the nature of lease deed and not tenancy agreement and since it was not registered it

cannot be read in evidence as contemplated under section 107 of the Transfer of Property Act. The findings of fact recorded by the courts below are entirely based on the evidence on record. No substantial question of law is raised. The second appeal is, accordingly, dismissed. Consequently, the civil application is also dismissed.

3. At this stage learned counsel for the appellant prays for time to vacate the suit premises. Mr.Kapse, learned counsel for the respondent has no objection for granting time till the end of December, 2007. In view of the submissions of the learned counsel, I pass the following order:

. Time to vacate the suit premises till 31st December, 2007 is granted subject to the appellant filing usual undertaking in this court within a period of three weeks from today with an advance copy thereof to the advocate for the respondents failing which it would be open for the respondent-plaintiff to execute the decree. It is made clear that filing of an undertaking shall not curtail right of the appellants to challenge this order in the Supreme Court.

(D.B.BHOSALE, J.)